

LAKE COUNTY PLANNING BOARD
April 11, 2018
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Steve Rosso, John Fleming, Sigurd Jensen, Rick Cothorn, Frank Mutch, Lee Perrin, Janet Camel, David Goss, Abigail Feiler, Brendeon Schoenig

STAFF PRESENT: Jacob Feistner, Lita Fonda, consultant Joel Nelson
Other staff in attendance in audience included Planners Rob Edington, Clint Evenson, Tiffani Murphy, County Attorney Wally Congdon, County Commissioner Gale Decker, consultant Dave DeGrandpre

Steve Rosso called the meeting to order at 7:01pm.

WILD HORSE RV RESORT PHASED MAJOR SUBDIVISION (7:01 pm)

Jacob Feistner presented the staff report. (See attachments to minutes in the April 2018 meeting file for staff report.)

Lee referred to the ongoing water rights issue on the Reservation. If they had to drill wells, was there a plan where they would be able to retain the water rights to the wells if they developed them? He didn't think they could answer that but it seemed like it was a big concern. They needed water. The system didn't provide enough nor did it provide water for fire hydrants. Jacob pointed to a condition that the County would not be held liable if they didn't get a water right. They could drill a well. Right now, their limit was 35 gallons per minute or 10 acre-feet per year. They weren't guaranteed a right to that well once the compact was concluded.

Rick asked about year-round living on these lots. Jacob said that was not restricted. He didn't know that it would happen. Lori Lundeen, the applicant, said it was pretty much a seasonal situation. Frank thought if the water wasn't available or if the marketing didn't happen, there might be environmental concerns with prepping the site. Would a condition say if that happened, the developer was responsible to take safeguards against erosion and so forth? Jacob said if this gained preliminary approval, [the County] wouldn't have control over that unless it was conditioned, until they came back for an extension. It could be addressed at that time. Approval was from 3 to 20 years for a phased subdivision. Lori said it would be developed one phase at a time.

Janet expressed concerns on the roads rights of way. The old townsites were platted before the Reservation was open to settlement. The roads that weren't used were abandoned and that land reverted back to the Tribes. Whether those rights of way could be utilized was in question. They showed them as in Tribal ownership. Neither option had an existing road. Jacob said [the access] came up 7th by the fire hall. Most of that would have to be constructed. It would come up the easement or the platted roadway for 7th and then turn west on H Street to the subdivision. Janet said H Street hadn't been developed. The homesite directly to the east of this proposed subdivision was right against the 28.9-foot abandoned right of way. That particular homesite lease was expecting the 30 feet next to him to be open space rather than developed. That was a

big issue to that lease. She believed utilizing either option for the road went against policy of giving those roads back to the Tribes. She referred to the discussion at the introductory meeting about the density of the 1-acre neighboring lots in the townsite compared to the 0.12 RV lots and whether it fit with the surrounding environment and neighborhood. Today when she spoke with Bret Birk, the Housing sewer and water engineer, he said he only had capacity on that system for 12 lots rather than 20. Was there something in writing from him so they could definitely predict how much capacity was available on the water system? Jacob said not yet. It was unfortunately a shrinking number. Janet said those were her three biggest issues on this subdivision.

Janet referred to pg. 8, I.2 and the last sentence of the first paragraph. If they were connecting to a Tribal system, [Salish & Kootenai Housing Authority] would need to review what's happening within the subdivision and would need to be joint reviewers.

Lee had questions on pg. 12, section M. Parkland, and the lack of clarity regarding the open spaces in the last sentence of the first paragraph. If there were winter residents, snow would take up the referenced area in a big winter. Jacob clarified this wording had been used in other subdivisions with open space. This development didn't appear to be used in the winter so the snow wouldn't be plowed. It wasn't discussed so he thought they should at least bring up uses of the open space.

Lee asked for updates on phone company comment. Jacob replied that phone service was in the area. They didn't get a comment back from the phone company although it was requested.

John asked if the impervious surface issue discussed last month had been taken care of. Jacob said he hadn't gotten further submissions on that

Melissa Tuemmler of Carstens and Associates, agent for the applicant, asked for clarifications on pg. 23. For condition #9, Jacob said that was the wording out of the subdivision regulations. You either gave the money to the County or built the roads. The applicants were planning on building the roads. On #17, he clarified that to waterways, the setback was 100 feet for the vegetative buffer and an additional 50 feet for the structure setback for a total of 150.

Rob Smith, the project engineer, described follow-up since the introductory meeting. He'd been in contact with Bret Birk, who was doing testing on the well that fed the Big Arm water system. As the testing numbers came back, Bret would have a better handle on what kind of issues and capacity the system had. They'd explored the alternative of placing wells and developing a public water system. Their preference was to join with the Big Arm water system and try to strengthen that system rather than doing something identical next door. They understood [the existing water system] had limitations too. They would see how that developed over time.

Rob S touched on septic systems and density from a comment at the last meeting. He showed a map and pointed out soils, highlighting the silty clay soil and a more sandy loam in the Big Arm Townsite. Lori Lundeen's project was primarily into the sandy loam/gravelly loam soils in the Big Arm Townsite. Quite a bit of the Townsite had the silty clay, which was generally a slower soil for septic systems. Between [the soil type] and the advanced treatment systems, they were

able to come up with a system design that was able to accommodate more RV sites than was traditional in the area.

Rob S continued that between the septic and the water system, there were issues to resolve. They were cognizant that you didn't want to tear the whole 20 acres up and then watch nothing sell, which was why the applicant had been specific about phasing it. They would have to take out an EPA erosion control permit for disturbance of over an acre, which involved inspections and a responsible party to make sure silt wasn't running off the site.

Melissa clarified the difference between a homesite and an RV site per DEQ septic regulations and circular 4. Wastewater flow was tied to water usage. An RV site was 1/3 of a standard house.

Janet noted there was definitely a potential for people living full time on these lots. Had this been taken into consideration above and beyond the DEQ circular? Melissa said the system being designed was for that continuous use. Even if someone lived year-round in a RV, it typically didn't generate as much water as a home. Rob S said with a sand mound serving 12 lots, it would have robustness built into it. Frank asked if the residents would have a central laundry to which Rob S signified no.

Steve asked if they'd thought about adding the impervious surface issue with the development of the [individual] lots to the covenants. Rob S said they were considering that and he was providing some guidance. Steve asked about 10-foot versus 15-foot property line setbacks. Jacob said they could make them consistent. Steve referred to Rob S's comment on their preference to enhance the Big Arm water system and added 'or increased capacity of the Big Arm Water System' to the end of condition #4 (pg. 22).

Steve touched on the maintenance of 7th Street and 8th Street, outside the subdivision. If they had rights to build roads there, who would maintain those? Had that been discussed with the Road Dept.? Rob S said they were simply going to build the roads and then comply with County regulations concerning long term maintenance. He thought one other resident used the roads. Steve noted these roads were off the property. Rob S didn't know if the County permitted private entities to do maintenance on public roads. Jacob didn't know the answer. A condition required that they get a comment from the road department to make sure this got addressed.

Frank commented on setbacks. RV's sometimes had slide-outs or awnings. Would the width of the awning be included in the setback? It wasn't always out. He suggested using the lesser 10-foot setback. Rob S responded that with a 50-foot lot and a 14-foot wide RV, that did give you quite a bit of room.

Steve brought up the impervious surface issue. Outbuildings had no size limit so it would start to control that. He suggested that the applicants might consider 30% of the full piece of property, without the setbacks removed, which allowed about 1350 square feet. That allowed a 500 square foot outbuilding and a driveway/ parking area of 12 feet wide and 70 feet long, which would be near the back of the lot. Thirty percent coverage also reflected a lot of the impervious surface allowable in zoned areas around the lake.

Public comment opened:

Neeta Parks (sp?) lived in Big Arm for 25 years. They didn't have a Big Arm Water Company. She thought there was Tribal water that they were willing to provide to people. They didn't have a sewer system. She felt bad about the way they said the road was going. There was no 8th Street. It was abandoned. There was a residence on 7th Street. She had a big 'dead end' sign on her property. That was working. She thought she'd need a bigger sign if motor coaches made the wrong turn between the fire house and Big Arm School. If they used 7th, they would turn at the fire house, continue on to the residence and go where? That was her concern. Why weren't they trying to access that land through Walking Horse Lane? The County didn't maintain the road they had, much less plow it. The County seldom plowed the fire house. She thought somebody was hired to do that now. If Big Arm School was plowed, it was because someone donated the time as a favor. The Tribes would plow for seniors who were Tribal. Her biggest concern was the right-of-way to this property. She had Tribal water. She couldn't use her well for drinking because of the arsenic level.

Gale Decker addressed the roads and confusion over abandoned roads versus undeveloped roads. They could check the Commissioners Journals to determine if that road had been abandoned. If it was undeveloped, it could be built out to County specifications and used. His understanding was if a road was abandoned, [the land] from the center line of the road to the outside of the right-of-way went to the property owners on both sides of the road. They could research this road to determine its status.

Public comment closed.

Janet said there was an issue on road abandonment on the reservation. The Tribes maintained that the land went back to the Tribes if it was never used for its original intent. It had not, so the Tribes maintained that was land in Tribal ownership and no longer a right-of-way. Gale said he was giving the County perspective. Steve thought this sounded like something that needed to be researched.

Steve asked how far the western edge of the property was from Walking Horse Lane. Rob S described some greater than 20-acre tracts between the two. Steve recalled a steep hill at the turnoff and Rob S mentioned a drainage gully to cross.

Dave asked Gale about road maintenance issues for the County. Gale believed that the County hadn't taken on more roads for maintenance since 1992. Some county roads were county-maintained. Other county roads were not maintained by the County. There were also private roads. Dave asked on the non county-maintained roads if there were problems with private parties maintaining those roads. Gale said that many times, folks formed a rural maintenance district. Money was assessed to their property taxes to go into a fund. A homeowners association or an executive committee used that money to maintain the road. He gave examples of maintenance districts.

Lee asked if anyone from the town of Big Arm was here besides Neeta Parks. It seemed like a pretty big deal for the town of Big Arm. Neeta Parks was the only one who'd given good information on concerns.

Public comment reopened:

Jack Neslin welcomed these people who were interested in investing in Big Arm and wished them luck.

Lori Lundeen, the applicant, said she'd been a Big Arm resident for about 15 years. She loved the area and had been there as a kid. She wanted to see it prosper and do well. She was happy to help out with situations that might arise and working with issues that were there.

Public comment reclosed.

Steve asked what was involved for a building notification review in this situation. Jacob listed the primary concern to make sure the development was consistent with subdivision approval. The covenants or road maintenance agreement might be referenced but they didn't enforce those. They made people aware of those but they enforced the subdivision approval and the DEQ approval.

Steve checked with Jacob and the applicant about moving forward, given questions with the access road and road maintenance. Rob S said they would prefer to see them move forward. If they had concerns, perhaps they could work with Jacob to write those as conditions.

Steve added an additional finding of I.I to the findings section on pg. 16: 'Maximum impervious surfaces are implemented on lots.'

Gordon Gieser (Rural Fire Chief) commented on the last sentence of the third paragraph of II.2, regarding donations to the fire department. He came in halfway through the process when the previous chief, who wrote the original proposal letter, retired. He introduced Lieutenant Martin Sago, who ran that station. They voiced concerns to Rob Smith when he called them. RV access and its impact on Hwy 93 with a turn lane was a concern. It would virtually come down in front of those three [fire station] bays. If [vehicles] were moving in and out at the wrong time, you could get a delayed response because they would have to maneuver around some of that stuff. Water supply was an issue. He had an additional concern about the distances between RV's. They were a rural fire district and had to provide all of their water with water tender shuttle programs in places where there was none. He enjoyed the comment about working with the water system that was there to enhance it. Their thought was [to have] a hydrant or two. The fewer people he had to assign to water supply, the more people on hose lines.

Steve thought a hydrant was in each phase of the plan. A question was whether the water dept. could supply water for the hydrant. Rob Smith understood from his discussion with the water engineer that they had a 50,000 gallon standpipe. That would be the water you would ideally access when you hooked to a hydrant. Gordon and Martin said the tender was 2,000 gallons. Gordon clarified that he was referring to the red hydrants. In their standard practice, the tender wouldn't come if there were hydrants. Then he could use staff on attack lines. For RV's, the

water amount was probably adequate if the infrastructure to go with it was done with it. A 6-inch main was bantered about. That was probably the bare rock minimum for something.

Steve returned to the donation. The Planning Board was accustomed to doing subdivision developments where a single donation per lot was made rather than an annual donation. Gordon thought the water supply portion was the primary portion, and secondarily the traffic. The [donated] amount of money wouldn't do enough, infrastructure-wise, for the fire district to do something monumental. Especially with year-round access, the water was probably the biggest component. Martin mentioned that the fire hall was hooked up to the Big Arm system with a 2-inch supply line. It took 25 minutes to fill the tender. It didn't permit active use of city water for firefighting. Gordon described more detail. Jack Neslin pointed out the Big Arm water system had fire hydrants in it. The question was if they'd been checked on flow. Janet said, as mentioned last month, they were not set up to provide fire flow. Indian Health Service provided the funding for that water system. They were not required to provide flow for fire, only potable water. The engineer told her today that there wasn't adequate flow with the amount of storage currently available. Frank mentioned smoke alarms and evacuation training were important with RV's.

Steve asked Sigurd if he recalled a decision to a discussion a few years' back about possibly increasing the \$100 donation amount. Sigurd said they hadn't made a decision. They left it at \$100 (one time). [Editor's note: discussion at 11/14/2012 Planning Board meeting most likely.] Rick thought there was consideration that was not appropriate any longer. Steve said they had wanted to increase that. If they wanted to keep it as a one-time donation, maybe the size could be increased. Some subdivisions had a pond or other [water] storage for firefighting. Jacob said they sometimes had to supply their own water.

Janet referred to the proposal on pg. 15 near the top. What did it cost to develop something like a water supply rapid fill site? Gordon didn't know. He'd like to see that rolled up with the development of the water system. Martin described some development in Missoula that had required an underground 10,000-gallon tank that they could draft out of. He didn't believe they ever used it. It was eventually taken out. Steve thought that what Jacob's research showed on digging wells in the Big Arm area indicated this was a better way to solve this than providing a storage area.

For condition #29 on pg. 24, after 'structural setbacks', Steve added 'limit amount of impervious surface to 30% of the total lot area (or as deemed reasonable by staff)'. Jacob observed they did have certain requirements for a permanent pad and so forth in the covenants, which they needed to consider. He pointed to covenant #5 in attachment #5. Steve agreed. He thought Rob S could run some calculations. Rob S noted the internal roads were designed to have very shallow ditches that a 5th wheel could be pushed through but at the same time allow the water to run from the lots to the roadside swales and down to the retention area.

On pg. 25 in condition #27, Steve asked if that included a waiver of a right to protest a community sewer system. It seemed like with the new growth policy, if a community sewer system did come on board in higher density areas, people were encouraged to hook up to it. Jacob agreed. He would make sure the condition covered public septic systems.

In condition #31, Frank added 'customary' to the last line between 'engaging in' and 'farm'.

Janet identified an issue for the access road at H Street. It would actually be going through an agricultural lease on Tribal land. They would have to re-fence and limit their agricultural practice there. There was livestock grazing going on in the townsite because [that property] was never developed. An unidentified Big Arm resident verified cattle grazed on that property every summer. Steve thought that would have to be worked out along with the road development rights.

Janet pointed out H Street in response to a question on its location. The group touched on the lack of G Street.

Frank asked about #27 (pg. 25) and the waiver of the right to protest. Wally said that this was very standard and a legitimate rule, and a standard condition for improvements. He listed a number of items for which this could be done. [A proposal] had to be reasonable because the other people in the district who benefitted could protest or not.

Steve asked about a condition to make sure the approval of the subdivision depended on working out access rights on the streets going from the highway to the property. Melissa said it would be development of streets that they didn't have proper access to. Jacob thought it needed to be addressed and investigated. Whose approval did they need to gain to develop those roads? Rob S checked that the staff report stated there was legal access. Jacob replied that from the County's perspective, there was. The question had been raised so they would look into it. They could put in a condition that said staff will confirm legal and physical access to the subdivision. Because [the County] felt it was legal didn't mean everybody else would feel it was legal. That was the sticky question. Melissa asked if they were saying there was a potential it was landlocked. She didn't think that was the case. Janet said it was a potential. Jacob said it was reasonable to include a condition that said staff will investigate the legality of access to this subdivision. He confirmed for Steve that he could put that condition in.

Janet said if legal access existed, they would need to mitigate impacts to the agricultural lease, whose lease would be shrunk. It would have to be re-fenced in order for the road to go through. Jacob said if it was determined there was legal access, it would be County right-of-way and would require an encroachment permit. Janet said the Tribes maintained that the road was abandoned a long time ago. The situation was discussed further, and people agreed it was messy. Gale said he checked the Commissioners Journals from 1966 on, and found no abandonment of 8th Street in Big Arm. If it was done, it was prior to that. [Editor's note: please see MCA 7-14-2615 for more information on abandoning County roads. See also attachment to minutes in the April 2018 meeting file for this information.]

Steve checked for discussion of the variance for the landscaping. Rick thought it seemed clear and reasonable. Steve thought while the landscaping rules were good, they were made generally for typical residential subdivisions rather than RV's. Lee wondered if the RV people would want to be buffered from the farming/ranching operations or whatever. Steve said they wouldn't have to plant trees but they weren't prevented from planting trees if the lot owners wanted them.

Jacob said that planting trees along the roads would interfere with the stormwater plan and the water line that followed the road. It made sense not to have plantings in that same area. Frank added that the lake view was one of the big plusses of this place.

Jacob turned to perpetual condition #31 on pg. 24 and suggested adding 'or extension of' after 'No RV' so no RV or extension of shall be placed within that 10 feet. If they did have a big awning, they wouldn't be dripping rainwater across the property line on the neighbor's lot.

Jacob pointed out a numbering problem such that there were some double numbers on pg. 24 and 25. Those would be fixed.

Motion made by Steve Rosso, and seconded by Rick Cothorn, to approve the landscape variance. Motion carried, 9 in favor (Steve Rosso, John Fleming, Sigurd Jensen, Rick Cothorn, Frank Mutch, Lee Perrin, David Goss, Abigail Feiler, Brendeon Schoenig) and 1 opposed (Janet Camel).

Motion made by Steve Rosso, and seconded by Frank Mutch, to recommend preliminary approval of the subdivision with changes discussed, findings of fact, conditions and perpetual conditions.

Lee noted there were a lot of unanswered questions. Janet brought up a lot of good questions about the right of way. They were looking into getting those resolved. Water was also an issue, as was the fire department. He didn't want to see a disaster from fire out there. It was a big concern to him. Steve returned to pg. 18 and the findings. He checked that at the end of the third paragraph of III.2, 'as long as traffic impacts to the fire service in the area have been mitigated' had been added. In the first paragraph of III.2, he checked that the fire department or fire district got added to the list of entities from whom comments were received. Frank added 'significant' to 'impacts'. Steve looked at pg. 22, condition 4. He'd suggested they add 'or increased capacity of the Big Arm Water System.' Did they need to include something about water supply for fire emergencies? Rob S said that DEQ would comment on the subdivision. DEQ required that he provide them a letter from the fire chief concurring with the design. Steve said each phase had a hydrant in its design for supplying water. He concluded the wording added already was sufficient. Steve asked if they would leave the \$100 per lot one time contribution or if it needed to be addressed. Rick said they would need to address that in the future but not tonight.

Given additional changes to conditions and findings, Steve Rosso said that his motion stood, including those changes. Frank Mutch said his second also stood. Motion carried, 7 in favor (Steve Rosso, John Fleming, Sigurd Jensen, Rick Cothorn, Frank Mutch, Abigail Feiler, Brendeon Schoenig) and 3 opposed (Janet Camel, Lee Perrin, David Goss).

LAKE COUNTY GROWTH POLICY REWRITE (8:42 pm)

Steve overviewed the order of discussion. Jacob connected last month's meeting to this month's meeting. Additional changes to chapters 8 and 9 were made last month. For this meeting, they were looking for recommendations and comments regarding Appendix C and as time allowed,

some additional comments on chapter 9. Tonight they needed to get a recommendation of approval, denial or some other action on how the growth policy moved forward.

Steve focused public comment on the growth policy as opposed to Density Map & Regulations (DMR) repeal or whether those should be regulatory or advisory. They had a proposal to add a changed density discussion as an appendix that would go along with the existing density map and would like comments on the proposed appendix C or other growth policy items.

Steve indicated that public comment was open. Billie Lee thought most of the public hadn't seen the proposed text or appendix C. Could they hear some review before commenting?

Steve confirmed with Jacob that it had been on the website. Jacob outlined changes. The previous density document was a regulatory zoning document that was adopted through the state-mandated process. [The proposed document] was not regulatory. It would be a component of the growth policy as an advisory document that would be used in development. The regulatory language was removed. Structurally, the definitions were moved from the front to the back of the document. The pages of exceptions and the variance section had been removed. A section on pg. 5 called 'Standards of Evaluation for Development in Consideration of the Density Map & Text' had been added. If someone wanted to deviate from the Density Map, which was as it had been, they would go through these standards of evaluation. If they could make findings that would support these different standards, the Commissioners would consider deviation from it. It would go to the Board of Commissioners for approval rather than the Board of Adjustment to deviate from the map. Some definitions were modified or added to make the document easier to use and to better fit some of the current conditions. They intended to revisit this in a year, at which time they might amend the map. At this time, the plan was that the text would change and the map would stay the same although it would be advisory rather than regulatory.

Steve said that switching from a regulatory to an advisory document and how they were going to enforce things were hard for him to get his head around. His first reaction to the elimination of exceptions and variances was if it wasn't mandatory, people could decide not to follow it if they didn't want to, so exceptions and variances weren't needed. They would learn how this worked. They might find that people ignored this document and they would have to do something different. Assuming they would be able to achieve some management of development, sprawl and so forth by making this advisory only, he thought they should concentrate on doing the best that they could with this document. His main concern involved land use. In some people's mind, land use included subdivision as a use. In other people's mind, the term meant things like residential, commercial, agricultural and so forth, rather than whether you were going to subdivide or not. He wanted to avoid that problem in the future. Changing the word 'use' in some places would help.

- Pg. C-5, end of first paragraph: Change 'use' to 'density'. He contrasted this to pg. C-2, where 'use' was used in the fourth paragraph of IV to describe things like residential, commercial and industrial rather than density.
- Pg. C-2, V.1, near end of third line: 'Uses' applied correctly here.
- Pg. C-5, VI.2: Change 'use' to 'density'. Sigurd thought it could be industrial or the like. Steve thought they wanted a document that, like the other one, dealt with density of

development but not land use. They didn't want to get into a confusion that density was use. That caused problems with the old document. Frank agreed. He thought it made the document more flexible by saying density instead of use. Steve said it emphasized that they were trying to control density rather than use.

- Pg. C-5, VI.6: The word 'uses' is okay.
- Pg. C-5, VI.2: Change 'uses' to 'densities'.
- Add a definition of the word 'use'. To start the discussion, Steve suggested 'Land use or use is the purpose for or activities conducted on land as in other zoning district regulations that refer to permitted uses, conditional uses or prohibited uses. Examples include single-family residential, home occupations, mobile homes, resorts, industrial establishments, casinos, commercial establishments, campgrounds, etcetera.' With that kind of definition for 'use' or 'land use', they made a distinction between where they were actually talking about those kinds of land uses and where they were talking about density in the document.

Frank, pg. C-5, VI.6: Change 'involve' to 'facilitate' or 'promote'.

John thought they would be making decisions on 3 basic things tonight: keep the DMR as they were, get rid of them entirely or modify them. He shared points which seemed relevant to what they were doing: Point one: The direct working relationship between the Lake County Planning Board and the Lake County Commissioners was one where the Board proposed policy and the Commissioners had the right to accept or reject it. The Board was not a governmental unit. The Commissioners were, and could set policy without [inaudible] of the Board. The Planning Board made recommendations to approve, modify or disapprove planned projects and the Commissioners made the final decision. This was true regarding the DMR. Point two: He received a very minimum of comments asking to change DMR into an advisory document. Almost all comments asked that they review the DMR in order to update and solve problems that those may be causing, nothing more. His third point: The DMR had not been reviewed. That wasn't a reason for dropping them. The Planning Board had always accepted that. In only one situation had a resident in Lake County asked for an exception to its regulations that he knew of. This exception was accepted by the Planning Board and the Commissioners. His point was that the DMR seemed to be working satisfactorily and needed only an update. That seems to be what the people he represented were feeling about this issue.

He wanted the rest of the Board to know that he was going to oppose changing the DMR.

Steve noted the growth policy discussion was listed ahead of the DMR repeal discussion on the agenda. Maybe it was in the wrong order. He confirmed for John that Appendix C was part of the growth policy. The idea was that if the DMR got repealed, they would have a part of the growth policy that was advisory that would discuss some of those same issues in it. John checked if, that no matter what the Board did, it was accurate that the Commissioners had already made a decision. Steve didn't think that was accurate. Staff and Commissioners had asked the Board to review this growth policy with the idea that Appendix C would be part of it. The Board could make a decision on what they thought

Steve, pg. C-9, 'Unit definition: To the end of the first sentence, add 'and contains both a bathroom and a kitchen that would make the structure independent.' A problem with the old DMR was people were put into a situation where they were against the DMR and frustrated with it because it prevented the kind of development that went on in MT. He gave the example of planning a shop before a house, and not being allowed a bathroom in a shop building.

Frank:

- Appendix C Heading: Change 'Regulations' to 'Text'.
- Pg. C-1, II: Leave in the phrase 'These guidelines in no way inhibit the complete use, development or recovery of any mineral, forest, or agricultural resources by the owner thereof.'
- Pg. C-9 definitions: He didn't see the purpose of it unless those applied to the whole growth policy since he didn't see all of the terms in Appendix C. Jacob clarified they were all in Appendix C, although some might only be mentioned briefly.
- Janet:
- Pg. C-2, V.1: Remove '/or'. It should just be 'and'. Jacob agreed.
- Pg. C-3, 4: Add 'while allowing appropriate setbacks' in the last sentence. Steve suggested placing it after 'property edge' in next-to-last line. Jacob asked if she was suggesting including a number. She said appropriate setbacks, so any already in regulations or codes.
- Pg. C-3, first full sentence on page: How would that be defined? It was very subjective.
- Pg. C-3, 5.b: Who would enforce this?
- Pg. C-5, 2: With the Big Arm subdivision discussed earlier in the evening, this was not considered. How did they know it would be considered in future subdivision review? Steve said these applied if they didn't meet the Density map. Big Arm met the DMR. Janet clarified that you had to take these things into account when you were reviewing. Couldn't density be lower than what was prescribed on the Density map? Jacob said Big Arm was lower. Janet said if the existing neighborhood was lower density for specific reasons, you could take that into consideration when you looked at a subdivision. Jacob thought you could take a lot of things into consideration. That would be one of them. Janet said the neighbors had a lower density and that was a concern. Steve said with the DMR, when people were buying and selling properties, they could look at the neighboring properties and see how it could potentially be subdivided. If you bought next to an area that could be divided into quarter-acre lots, you went into it knowing that. In Big Arm, people have known since 2005 that there could be some high-density subdivision in the area. Janet said from a Tribal perspective, if the Tribes developed at a lower density in the area, couldn't that be considered? Steve thought it could.

Janet:

- Pg. C-5, 2: Include wildlife habitat and other features of that general vicinity.
- Pg. C-5, 6: Add 'air' to the list of traffic, noise, etc.
- Pg. C-5, last sentence on page: Add 'in addition to the adopted regulations.'

Jacob, pg. C-5, 2 (Is harmonious and appropriate....): It was implied that [Planning was] not currently doing this so why would they do it in the future. That was an inaccurate statement.

Big Arm subdivision was being developed to a platted townsite with lots very similar in size to what [inaudible] was being proposed. Further, a much higher density was only a quarter-mile north with 60 proposed units on 4 acres. The 60 lots on 20 acres that they were dealing with in Big Arm subdivision was not only harmonious and compatible, but may be very appropriate as proposed, based on the Community Development that's on the DMR. They did take that into consideration and strengthened the language here by taking [the language] out of a zoning district that did look at uses and harmonious uses. He believed they'd taken that into consideration and would continue to take it into consideration. Janet appreciated that. On the lake, there was high density. As you moved further from the lakeshore, the density decreased. That was her concern since they'd already established lots there, at 1 unit per acre. The high density next door would impact that community. Jacob and Janet spoke further to interpretations on this. Jacob explained [the density] was designed so someone couldn't come into Valley View or Irvine Flats and propose a subdivision of small lots that was surrounded by big agricultural lots. It wouldn't be harmonious or appropriate in the middle of Irvine Flats. The proposal they'd been discussing was next to a townsite so it seemed like it was more appropriate than out in the middle of the country. That was what it was intended to mean. He confirmed that under the old regulations, you could gain development rights.

Given that there'd been discussion on Appendix C, and hopefully some background given with it, Steve moved to public comment.

Public comment opened:

Ed Blackler, from the upper edge of Lake County by Bigfork, agrees with John F. When he heard about this meeting, he thought they would discuss whether or not to recommend eliminating the DMR to the Commissioners. Obviously they were up to something else. They were making amendments to a document they hadn't provided adequately to the public for public input. He strongly recommended they didn't send any recommendation to the Commissioners at this point in regards to this matter. He appreciated they had a challenge to face with the growth and development in Lake County. He referred to Woods Bay and sprawl there, with industry, residents, high density of accommodations—it was a conglomeration. It needed to be addressed. Appendix C might address it but they needed to get that out to the people so they could have some input and talk about it intelligently. He thought it was important that they took a look at these things and say what kind of development. There was confusion between density and use. Density was how many people could live in one spot. Developing the use in a given area that's compatible and harmonious with those people who bought property with certain expectations was important so when someone came with a far different request, they could go back to how it fit with what the people who lived there envisioned and then take action. If they could come up with an Appendix C that described something regulatory, with rules, and see how it fit into the game plan, then they had a way to make valid recommendations. He hoped next time the agenda matched what he heard.

Jordan Thompson, CS&KT attorney quoted Gale Decker from last month's meeting that the DMR hadn't achieved their intended purpose to help achieve the goals and objectives of the 2003 growth policy, looking at the 24 items listed on pg. 118, where a 2015 analysis by Wally Congdon, County Attorney, thought one item was accomplished and 9 were partially done. The

remaining had not been accomplished. Jordan looked at the growth policy and realized the DMR's were a red herring. Of the 25 tasks in table 7-1, with 16 implementation tools to accomplish the 25 tasks, only one [tool] was the DMR. It was the implementation tool for the task to develop and adopt an overall density map for future development, which was accomplished. He listed some of the other tasks that the DMR could not address, which were intended for the 15 other implementation tools. A red herring was a misleading or distracting argument in the legal world. The DMR's were being held responsible for tasks for which it was not intended be responsible. He listed the Tribes as another red herring where the Tribes were being blamed. He felt like he was playing whack-a-mole with arguments. The Tribes said it wasn't regulatory for the Tribes and that was a huge issue for the County so they offered to propose an MOU (memorandum of understanding). The group knew the rest of that story. He mentioned the MOU between the CS&KT and the Missoula Board of County Commissioners regarding cooperative land use, planning and regulation. This was done pursuant to an interlocal agreement pursuant to the Montana code. He didn't think they needed to be that formal. This was just one example they had with the Missoula Commissioners regarding planning.

Jordan said the Tribes saw the DMR as a success story and would continue to support them. It was the story of two sovereign governments coming together and protecting what they all loved. If you looked at the purpose of the DMR, it talked about things like preventing the overcrowding of land, avoiding undue concentration of population, directing growth for public services such as fire, police protection [inaudible], school bus transportation and road maintenance provided in a cost effective manner, thereby reducing public expenditures. He pointed to things like that, and maintaining a rural character and agricultural production areas. It provided clear guidelines to people. They'd seen the partnership work for 10 years and it hadn't had an issue. It hadn't been litigated and he thought it had done those things it set out to protect. He saw two paths forward. Option A was they passed the growth policy without Appendix C and then developed the DMR. Option B was they passed the growth policy with Appendix C and, pointing to the first full sentence of pg. C-3, he thought that took any kind of certainty out. It was anyone's guess what might happen with that.

Jordan said the record showed that at the February meeting, Gale Decker wasn't sure if he'd received the Tribe's MOU or not. Jordan had a letter dated Feb. 4, 2016 where the Tribal Council invited all of the Commissioners to come discuss an MOU. He brought with him the email chain where he sent the email on Feb. 2016 and resent it to Commissioner Decker on Feb. 2018 and Commissioner Decker's response, which included that he confirmed with IT that it did go to the [County's] server. As a Tribal attorney, and speaking on behalf of the Tribes, he hoped they figured out a way to work on keeping the DMR as regulatory. He recommended keeping the growth policy and adding the DMR as regulatory later on and they could all work on that together.

Jordan commented as a tax-paying citizen. He thought this was a community issue rather than a Tribal and County issue. He was a Tribal member but there was a good chance his kids and grandkids wouldn't be. He appreciated the Tribes stepping up and wanting to protect this area, and the previous Commissioners doing the same. He hoped his descendants would get to love the same things that we did, such as open space and the beauty, whether they were Tribal or not. As a citizen, he asked that they keep the DMR as regulatory.

Kathryn Yelsa of St. Ignatius wanted a copy of the regulations that were proposed. Also was any restoration economy discussed here? She hoped there were benefits for landowners who wanted to restore their land back to a more pristine environment than what they got it in. There was much more poaching [on the lands] around hers because they had more people who seemed to think that was an okay thing to do. With more people, there would be more destruction of their land. Her family was from Anaconda. She didn't think it was a good idea. It never worked out there or in Butte. She hoped they would look at the restoration economy and making our economy based on restoring our land and maybe doing other things beside casinos and so forth that depleted the land.

Billie Lee of Polson thanked the Board for reversing things to have discussion first. She had some of the same concerns relative to [the document]. If it wasn't regulatory, what was it? What did you do with it? They could make a recommendation to a landowner who wanted to do something entirely outside the DMR issue, but what were they required to do? Did they have to show that the neighbors agreed with them, for instance? There should be a road in the DMR for variances that would include how you got your neighbors on your side to create a different environment within that neighborhood or area similar to what you had to go through for subdivision when you had to notify the neighbors of what your intent was. There needed to be road maps. That was what she heard when people were objecting to the DMR in and of itself in the regulations. It had little to with the Density Map except as how they could get around it or find the mistakes in it. If the original plan has been adhered to, [it included] a review every 5 years and updating it and considering what the issues were, [since] no document was perfect the first time out.

Billie saw and honored the intent of doing Appendix C but she disliked removing the word 'regulatory'. It should not come out without some very specific 'we need to review this issue' and it needed to be reviewed over time. With the number of people who were here and also at the last three DMR hearings she'd attended where people were sitting on the floor, it obviously wasn't an issue that was the growth policy in and of itself. That hadn't lit the fires of people the way that the DMR and the idea of getting rid of it had. If they were going to do Appendix C, and she honored that, she believed they should put it in with teeth that kept it regulatory but also to do something else with it to better incorporate it. Had they really defined the real issues with it or had they only defined the emotional response to it? She asked how many people had requested variances of the DMR. Frank guessed 20 or so had gone to the Board of Adjustment (BOA) in the last 4 years and had been approved. Jacob and others thought that was too high. (Editor's note: 8 in 4 years, not 20.) Jacob explained that staff did a significant amount of filtering before an application went to the BOA. Billie asked why it was an issue if they'd been approved. Frank didn't think the conversation was appropriate.

Gale thought changing the word 'uses' to 'density' was appropriate. It was difficult to get rid of 'uses'. Conservation development was discussed later in the document. The old document talked about undevelopable land. In his opinion, those were land uses. The old document used the words 'land use'. It said it was not to prescribe land use but did so in the definitions. Regarding the comment on using the character of the area, if they used that, then why have a Density map? Regarding the MOU, those were not legally binding. No one had addressed the

opinion that was given by Alan McCormick of the University of Montana that it would be very difficult for CS&KT and Lake County to cooperate and build a document that both governments could use. He'd never heard the argument addressed of why this document wasn't discriminatory. It was since it treated one class of people differently than another class. Jordan Thompson offered to address that. Steve directed that other public comment be given first.

Charmel Gillian owned fee land in the Ronan area with her husband with a small ranch and a home. Her observation on the growth policy review and Appendix C was that it was confusing. She understood Steve Rosso to say that Appendix C would be taken in place of the DMR and made a part of the growth policy. They were addressing that here first so she saw it as out of order. It put them in an interesting predicament as far as how they would move forward to look at the DMR as either regulation or advisory. It painted the landscape for them. She appreciated the inputs on it and the important work being done by the Planning director and the Board to go through this. The discussion about harmonious environments was really important and something that everyone was concerned about. She thought that was why people got so excited about whether the DMR was regulatory versus advisory, because a lot had grown up in this valley. When you looked at the growth of this valley, for instance in the Arlee/Jocko/Evaro community, a lot of people in that area were very concerned about that. There was a lot of pressure from people who were interested in residing there. The man who spoke about his ownership in Woods Bay had a relevant point and it was a similar situation. The folks who spoke about their residence in Big Arm were accustomed to a certain amount of use in that area. It was a tough predicament for [the Board].

Charmel grew up here. It was hard to say that she felt things were not discriminatory around here. Gale Decker had said he didn't like this because it was a discriminatory type of regulation. That was interesting. She wished they could wipe that type of behavior away and be more harmonious themselves. She believed they saw some effort to utilize the DMR as a guideline and she thought that had been acceptable to the majority of the residents in Lake County according to what she understood public comment to be. She hadn't planned to speak tonight until Gale Decker made comments. He didn't introduce himself nor was he asked to. He didn't need to because he was your Commissioner. She thought that was a little bit of pressure. She was a newly elected member of the Tribal Council. She came here as a resident of Lake County, not a Council member. When they invited the public to make comments, they usually just allowed them to make comments because [the Council] would be tasked with the final decision, as would the Commissioners. This Board hoped to make a recommendation based on public comment. She found that a little bit out of order as well. It was an interesting process to witness. Gale noted he introduced himself when he first spoke.

Jordan Thompson responded to Gale Decker's point. Jordan hadn't seen the 2003 memorandum so he was going from Gale's footnote and the testimony he provided at last month's hearing. He read from a memorandum from Alan McCormick, Land Use Law Clinic at the University of Montana School of Law, April 16, 2002. The point of the MOU was to create an agreement between the Tribes and the County, where each would have its own laws and regulations that each would separately enforce. There was no crossover so he saw no legal issue with that. An MOU would state that the Tribes would enact Tribal law to require enforcement of the DMR. The Tribal law was what the enforcement act would be through the MOU, the joint

understanding. As far as the comment on discrimination, it was impossible for the Tribal government to discriminate against fee landholders. In order to discriminate, you had to have similarly situated people where one class got treated differently than the other class. When you looked at Tribal citizens, the Tribes had jurisdiction over Tribal lands. They had no jurisdiction over fee lands. To say they were discriminating non-members would be like saying Canada was discriminating against him because they had different land laws. It was totally separate. He reiterated that they did follow the DMR.

Steve suggested the Board discuss continuing the meeting. They had a lot to cover yet. The Commissioners scheduled a decision on repealing the DMR on April 24. Gale confirmed they'd prefer to have a recommendation from the Planning Board. Discussion ensued, touching on both the growth policy review and the DMR recommendation. Jacob noted most comments received pertained to the DMR. The growth policy specifically received eight comments, which had been accounted for. Steve thought the Board needed to discuss those and approve or disprove them. Janet said the public needed time to review the changes made last month and in appendix C. Frank thought the public inform and involve process was inadequate although legal, and had been done. John thought he saw a lot of the same people back who didn't know what was going to happen tonight. A member of the public asked about getting a paper copy.

Dave said he was a member of the Board and he was confused. He had a problem with the order. If they voted on appendix C, right now the DMR's were the law of Lake County. They didn't have the authority to consider an appendix that changed that. They were being asked to make a recommendation on something that went against the law, without knowing if they were going to change it. He thought that was out of order. Right now he was in a position of having to vote against appendix C and the growth policy, not necessarily because he supported the DMR or the repeal, but because he thought it was out of order. If he had to keep voting no, people would think he was anti-growth or anti-development but he wasn't. He was pro-good planning. He voted no on the subdivision because he thought there were too many unanswered questions to send that forward. The same was true of the growth policy. Until they had some answers, he wasn't prepared to vote on appendix C. Steve agreed. He should have attempted to change the agenda order. They were where they were now. Should the Board make a decision on the DMR repeal tonight?

Joel broached that they could continue the meeting with the announcement of the time and place. If it was a continuation, you didn't have to run notice. Steve outlined the two things left to do tonight. Completing the growth policy discussion could take 30 to 60 minutes. Possibly because of the discussion that had already happened on the DMR, the Board could make that decision quicker. Jacob thought if that would make the other decision make more sense, they should do that. Steve noted that would give the Commissioners a recommendation for the April 24 meeting. Jacob said it would be nice to have it all done by the April 24 meeting. Steve verified with Gale that a decision date for the growth policy had not yet been set.

REPEAL OF THE LAKE COUNTY DENSITY MAP & REGULATIONS (10:10 pm)

Steve didn't think they needed to open for public comment since they'd had 3 or 4 months of public comment. The Board turned to the 'Planning Board Written Report of their Recommendation' received in the staff packet that began with a memorandum regarding agenda

items for the April 11, 2018 Planning Board meeting. It had the option to repeal or not repeal the DMR and a place for additional comments. Jacob said they could add a page if they needed for more comments.

Steve said they'd had a lot of public input on this issue, and input from the Lake County civil attorney and at least one of the County commissioners. They'd had a chance to think about that. He believed strongly that they could make the DMR document work. He agreed the existing document had problems and needed to be amended and adjusted. If they looked at this from the perspective of coming up with County-wide zoning that was limited just to density, they could come up with a legal document that did that. The public comments were in favor of that approach. [The DMR] had gone through quite a process in 2005. They needed to work from that standpoint. If they bagged this and wished they hadn't, it would be very hard to get something else in place. He didn't think they should repeal the DMR.

Rick appreciated his perspective. Without strong counter legal input, he was comfortable voting to repeal the DMR, given that they were not legally defensible. He'd followed civil attorney advice in his prior life to success. He didn't find wisdom lacking in the advice. He couldn't address the Commissioners concerns. Based strictly on the legal advice, he wasn't comfortable keeping the DMR and was in favor of repeal.

Frank pointed to the letter of 12/9/15, which were things that weren't done. Another letter of 3/22/16 hadn't been discussed, which Frank said listed somewhere in there that it was illegal. It said it was not defensible and didn't meet the law. Frank repeated his views on the growth policy and DMR. He thought the characterization of this discussion as a battle between those who wanted to develop and those who wanted to protect the environment was unfair. To him, it was an issue of government overreach and discrimination. As long as he was under two different governments and had two different jurisdictions, which included air quality, lakeshore and other issues dealing with sovereignty, he had two governments telling him what to do on his private piece of property. That was the issue to him. The map would apply to the creation of parcels; it wasn't going away. It wasn't true that everyone wanted to keep it. The public hadn't read most of this stuff. It wouldn't adversely affect the environment. He could develop a rural subdivision under the old regulations that he couldn't do under the new guidelines.

Steve mentioned the question of enforcement, which was a bit of an unknown. He pointed out that the Board was about to make an advisory decision to the Commissioners, who might not follow that advice. That might be an example of what could happen to the DMR without regulatory enforcement. Landowners who wanted to subdivide might or might not take the advice. That was one of the challenges.

John commented that he kept hearing the DMR were undefensible. They hadn't had any court cases. People weren't sure what was being done here and at some point would have to pay attention to what was going on. He thought that was a weakness.

Janet referred to the people who had attended these meetings and said they'd bought property here knowing the land would be protected because of the DMR. She thought they'd be going back on promises the County had made to protect those neighboring lands for all the people who

moved here in the last 12 to 13 years, buying land knowing they wouldn't have a big subdivision next to them. Given the property the Tribes bought in the 1 per 40 density areas, the property that the Tribes owned before the DMR was developed and trying to keep densities low in those areas, the Tribes were following Tribal policies but trying to get non-Tribal people to follow those policies was difficult. The DMR showed a way they were cooperating to try to keep densities low in critical areas. If this was not regulatory, they could lose the resource protection investment in those critical areas: wilderness buffer zone, Nine Pipe Area, Flathead River corridor, Jocko River corridor. She'd heard about people trying to sell expensive lots right next to Tribal properties designated as protection with Tribal conservation easements. These developers wanted to come in and have as many lots as possible so they could have these exclusive areas to themselves because the Tribes wouldn't build next door to them. The DMR provided some teeth to protect those critical areas. Once they were developed, they were gone. She thought they should protect the rights of the people who wanted to live here because of this special place and because of the protection that occurred here. An advisory document wouldn't do it. Jacob would do a fine job but who would do it after him? There was too much unknown information whereas a regulatory document gave some teeth.

Rick came from the land of the Big Settlements. The governments paid huge amounts for not doing what they were supposed to. It went against his grain to not follow the appropriate legal advice. He didn't know the protocols here but there was exposure that he would like to eliminate, as he saw it.

Frank thought to keep it, they'd still have to repeal it and start over. He thought it should go through a zoning procedure with hearings. Steve said hearings would be involved in the amendment process. Janet pointed out the zoning document did go through the appropriate hearings when it was first adopted, as a zoning document.

Abigail was a lifelong resident who'd surveyed and mapped out subdivisions and felt fortunate to live here. This place was a gem, partially because it was partially a reservation and the Tribes kept their land undeveloped in a lot of places. Making these advisory was foolish with the time that went into making this document and going to different towns around the County to ask for the public's input. Now the meetings were in Polson once a month where people had to travel from the ends of the County to get here. In reading the Planning Board Members' Handbook today, it spoke about conflict of interest. She thought that Gale being here as a Commissioner was somewhat of a conflict of interest. It was the Board's job to give [him] their opinion and what they heard from the public. The other two Commissioners weren't here. She wondered if recusing himself might be a wise decision so that he could comment as a public citizen and not as a Commissioner who seemed to be in favor of making them advisory. That wasn't fair because the overwhelming majority of the public asked them to keep it as regulatory. It was somewhat discouraging to take in the public comments as a Board member and it really didn't matter from what she saw. Gale explained that if the other Commissions came, it was a meeting. Abigail said she hadn't seen the other Commissioners taking turns at the meetings.

Dave said he was the opposite, having been in Lake County for a little over a year although he was a 3rd generation Montanan and there were 3 generations after him. He'd been on other planning boards for over 15 years. He'd sat through the discussions and arguments brought up

tonight in many other locations. The arguments that it wasn't working because people had to go to the Board of Adjustment (BOA) and that they needed to make amendments weren't an indication that things were broken. That was an indication that the system was working. Planning and zoning were put in place recognizing that the natural occurrence of things was growth. You had to make sure that the growth occurred in such a way that it protected the interests of those around it. Nobody wanted to build a million dollar house and then wake up to find a big billboard on the lot next door that said 'Future Home of Paul's Pig Palace'. The fact that things had gone through the BOA and most had been approved said to him that the system was working. That didn't mean they didn't keep trying to fix it. There were always ways to improve things. To him, to throw it out before they had that way to improve it was the wrong way to go. He referred to comments about who should get to make these decisions: taxpayers only, property owners only or all residents. He reminded that one group of people probably had more impact on planning and land use in Lake County than anybody else. This was the 150 legislators that met every two years in Helena. Of that 150, he asked John how many lived in Lake County. John replied three. They were all in here and all needed to make it work together. As far as what was legal and what wasn't, if everyone could agree on that, they'd have one lawyer in the county.

Motion made by Steve Rosso, and seconded by Dave Goss, to recommend not repealing the Density Map and Regulations. Motion carried, 6 in favor (Steve Rosso, John Fleming, Lee Perrin, Janet Camel, David Goss, Abigail Feiler) and 4 opposed (Sigurd Jensen, Rick Cothorn, Frank Mutch, Brendeon Schoenig).

Steve said he didn't know whether or not they wanted to add comments to this document. Frank suggested seeing the minutes of the last years of meetings.

Steve checked with Jacob if they could adjourn and save the minutes and final discussion and decision of the growth policy for another meeting. The Board discussed dates and times. Regarding notice, Jacob read from the codes. They didn't need to notice it if they fixed the time and date at this regular meeting. The Board chose Wed, April 18 at 6pm.

Steve Rosso, chair, adjourned the meeting at 10:34 pm.